



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1264]

In the Matter of Certain High-Potency Sweeteners, Processes for Making Same, and Products Containing Same; Notice of a Commission Determination Not to Review an Initial Determination Granting Summary Determination of No Violation of Section 337; Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 29) of the presiding administrative law judge granting summary determination of no violation of section 337. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 14, 2021. 86 FR 26544-45 (May 14, 2021). The complaint, as supplemented, was filed by complainants Celanese International Corporation of Irving, Texas; Celanese (Malta) Company 2 Limited of Qormi, Malta; and Celanese Sales U.S. Ltd. of Irving, Texas (collectively “Celanese”) and alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-potency sweeteners, processes for making

same, and products containing same by reason of infringement of certain claims of U.S. Patent No. 10,023,546, U.S. Patent No. 10,208,004, U.S. Patent No. 10,590,098, U.S. Patent No. 10,233,163, and U.S. Patent No. 10,590,095. *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named twelve respondents, including Anhui Jinhe Industrial Co., Ltd. and Jinhe USA LLC ("Jinhe"). *Id.* On August 6, 2021, the Chief Administrative Law Judge ("CALJ") issued an ID granting a motion by Celanese to add eleven additional respondents to the investigation. Order No. 14, *unreviewed by Comm'n* Notice (Aug. 23, 2021). On August 26, 2021, Celanese filed an amended complaint adding the eleven additional respondents. The Office of Unfair Import Investigations ("OUII") is also participating in this investigation. 86 FR at 26544.

On September 2, 2021, respondent Jinhe filed a motion for summary determination of no violation based on the contention that all of the asserted patent claims that Celanese relied on to satisfy the technical prong of the domestic industry requirement are invalid under the "on-sale bar" provisions of 35 U.S.C. 102(a)(1). On September 13, 2021, Celanese filed a brief in opposition. OUII filed a brief in support of Jinhe's motion on the same day. The CALJ held oral argument on Jinhe's motion on September 28, 2021.

The CALJ issued the subject ID granting Jinhe's motion on January 11, 2022. Specifically, the ID found that the on-sale bar applied to invalidate all of the remaining claims that Celanese relied on to establish a domestic industry. Accordingly, the ID found that the investigation should be terminated with a finding of no violation of section 337 due to Celanese's inability to satisfy the domestic industry requirement of section 337. Celanese petitioned for review of the ID on January 21, 2022. Jinhe and OUII submitted responses opposing Celanese's petition on January 28, 2022.

Having examined the record of this investigation, including the ID, the petition for review, and the responses thereto, the Commission has determined not to review the ID. This investigation is terminated in its entirety.

The Commission vote for this determination took place on April 1, 2022.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 1, 2022.

Lisa Barton,
Secretary to the Commission.

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